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1 AMENDMENT TO HOUSE BILL 4023

2 AMENDMENT NO. _____. Amend House Bill 4023 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Criminal Code of 1961 is amended by
5 changing Section 11-21 and by adding Articles 12A and 12B as
6 follows:

7 (720 ILCS 5/11-21) (from Ch. 38, par. 11-21)
8 Sec. 11-21. Harmful material.

9 (a) As used in this Section:

10 "Distribute" means transfer possession of, whether
11 with or without consideration.

12 "Harmful to minors" means that quality of any
13 description or representation, in whatever form, of
14 nudity, sexual conduct, sexual excitement, or
15 sado-masochistic abuse, when, taken as a whole, it (i)
16 predominately appeals to the prurient interest in sex of
17 minors, (ii) is patently offensive to prevailing standards
18 in the adult community in the State as a whole with respect
19 to what is suitable material for minors, and (iii) lacks
20 serious literary, artistic, political, or scientific value
21 for minors.

22 "Knowingly" means having knowledge of the contents of
23 the subject matter, or recklessly failing to exercise
24 reasonable inspection which would have disclosed the

1 contents.

2 "Material" means (i) any picture, photograph, drawing,
3 sculpture, film, video game, computer game, video or
4 similar visual depiction, including any such
5 representation or image which is stored electronically, or
6 (ii) any book, magazine, printed matter however
7 reproduced, or recorded audio of any sort.

8 "Minor" means any person under the age of 18.

9 "Nudity" means the showing of the human male or female
10 genitals, pubic area or buttocks with less than a full
11 opaque covering, or the showing of the female breast with
12 less than a fully opaque covering of any portion below the
13 top of the nipple, or the depiction of covered male
14 genitals in a discernably turgid state.

15 "Sado-masochistic abuse" means flagellation or torture
16 by or upon a person clad in undergarments, a mask or
17 bizarre costume, or the condition of being fettered, bound
18 or otherwise physically restrained on the part of one
19 clothed for sexual gratification or stimulation.

20 "Sexual conduct" means acts of masturbation, sexual
21 intercourse, or physical contact with a person's clothed or
22 unclothed genitals, pubic area, buttocks or, if such person
23 be a female, breast.

24 "Sexual excitement" means the condition of human male
25 or female genitals when in a state of sexual stimulation or
26 arousal.

27 (b) A person is guilty of distributing harmful material to
28 a minor when he or she:

29 (1) knowingly sells, lends, distributes, or gives away
30 to a minor, knowing that the minor is under the age of 18
31 or failing to exercise reasonable care in ascertaining the
32 person's true age:

33 (A) any material which depicts nudity, sexual
34 conduct or sado-masochistic abuse, or which contains

1 explicit and detailed verbal descriptions or narrative
2 accounts of sexual excitement, sexual conduct or
3 sado-masochistic abuse, and which taken as a whole is
4 harmful to minors;

5 (B) a motion picture, show, or other presentation
6 which depicts nudity, sexual conduct or
7 sado-masochistic abuse and is harmful to minors; or

8 (C) an admission ticket or pass to premises where
9 there is exhibited or to be exhibited such a motion
10 picture, show, or other presentation; or

11 (2) admits a minor to premises where there is exhibited
12 or to be exhibited such a motion picture, show, or other
13 presentation, knowing that the minor is a person under the
14 age of 18 or failing to exercise reasonable care in
15 ascertaining the person's true age.

16 (c) In any prosecution arising under this Section, it is an
17 affirmative defense:

18 (1) that the minor as to whom the offense is alleged to
19 have been committed exhibited to the accused a draft card,
20 driver's license, birth certificate or other official or
21 apparently official document purporting to establish that
22 the minor was 18 years of age or older, which was relied
23 upon by the accused;

24 (2) that the defendant was in a parental or
25 guardianship relationship with the minor or that the minor
26 was accompanied by a parent or legal guardian;

27 (3) that the defendant was a bona fide school, museum,
28 or public library, or was a person acting in the course of
29 his or her employment as an employee or official of such
30 organization or retail outlet affiliated with and serving
31 the educational purpose of such organization;

32 (4) that the act charged was committed in aid of
33 legitimate scientific or educational purposes; or

34 (5) that an advertisement of harmful material as

1 defined in this Section culminated in the sale or
2 distribution of such harmful material to a child under
3 circumstances where there was no personal confrontation of
4 the child by the defendant, his employees, or agents, as
5 where the order or request for such harmful material was
6 transmitted by mail, telephone, Internet or similar means
7 of communication, and delivery of such harmful material to
8 the child was by mail, freight, Internet or similar means
9 of transport, which advertisement contained the following
10 statement, or a substantially similar statement, and that
11 the defendant required the purchaser to certify that he or
12 she was not under the age of 18 and that the purchaser
13 falsely stated that he or she was not under the age of 18:
14 "NOTICE: It is unlawful for any person under the age of 18
15 to purchase the matter advertised. Any person under the age
16 of 18 that falsely states that he or she is not under the
17 age of 18 for the purpose of obtaining the material
18 advertised is guilty of a Class B misdemeanor under the
19 laws of the State."

20 (d) The predominant appeal to prurient interest of the
21 material shall be judged with reference to average children of
22 the same general age of the child to whom such material was
23 sold, lent, distributed or given, unless it appears from the
24 nature of the matter or the circumstances of its dissemination
25 or distribution that it is designed for specially susceptible
26 groups, in which case the predominant appeal of the material
27 shall be judged with reference to its intended or probable
28 recipient group.

29 (e) Distribution of harmful material in violation of this
30 Section is a Class A misdemeanor. A second or subsequent
31 offense is a Class 4 felony.

32 (f) Any person under the age of 18 that falsely states,
33 either orally or in writing, that he or she is not under the
34 age of 18, or that presents or offers to any person any

1 evidence of age and identity that is false or not actually his
2 or her own for the purpose of ordering, obtaining, viewing, or
3 otherwise procuring or attempting to procure or view any
4 harmful material is guilty of a Class B misdemeanor.

5 ~~(a) Elements of the Offense.~~

6 ~~A person who, with knowledge that a person is a child, that~~
7 ~~is a person under 18 years of age, or who fails to exercise~~
8 ~~reasonable care in ascertaining the true age of a child,~~
9 ~~knowingly distributes to or sends or causes to be sent to, or~~
10 ~~exhibits to, or offers to distribute or exhibit any harmful~~
11 ~~material to a child, is guilty of a misdemeanor.~~

12 ~~(b) Definitions.~~

13 ~~(1) Material is harmful if, to the average person, applying~~
14 ~~contemporary standards, its predominant appeal, taken as a~~
15 ~~whole, is to prurient interest, that is a shameful or morbid~~
16 ~~interest in nudity, sex, or excretion, which goes substantially~~
17 ~~beyond customary limits of candor in description or~~
18 ~~representation of such matters, and is material the redeeming~~
19 ~~social importance of which is substantially less than its~~
20 ~~prurient appeal.~~

21 ~~(2) Material, as used in this Section means any writing,~~
22 ~~picture, record or other representation or embodiment.~~

23 ~~(3) Distribute means to transfer possession of, whether~~
24 ~~with or without consideration.~~

25 ~~(4) Knowingly, as used in this section means having~~
26 ~~knowledge of the contents of the subject matter, or recklessly~~
27 ~~failing to exercise reasonable inspection which would have~~
28 ~~disclosed the contents thereof.~~

29 ~~(c) Interpretation of Evidence.~~

30 ~~The predominant appeal to prurient interest of the material~~
31 ~~shall be judged with reference to average children of the same~~
32 ~~general age of the child to whom such material was offered,~~
33 ~~distributed, sent or exhibited, unless it appears from the~~
34 ~~nature of the matter or the circumstances of its dissemination,~~

1 ~~distribution or exhibition that it is designed for specially~~
2 ~~susceptible groups, in which case the predominant appeal of the~~
3 ~~material shall be judged with reference to its intended or~~
4 ~~probable recipient group.~~

5 ~~In prosecutions under this section, where circumstances of~~
6 ~~production, presentation, sale, dissemination, distribution,~~
7 ~~or publicity indicate the material is being commercially~~
8 ~~exploited for the sake of its prurient appeal, such evidence is~~
9 ~~probative with respect to the nature of the material and can~~
10 ~~justify the conclusion that the redeeming social importance of~~
11 ~~the material is in fact substantially less than its prurient~~
12 ~~appeal.~~

13 ~~(d) Sentence.~~

14 ~~Distribution of harmful material in violation of this~~
15 ~~Section is a Class A misdemeanor. A second or subsequent~~
16 ~~offense is a Class 4 felony.~~

17 ~~(e) Affirmative Defenses.~~

18 ~~(1) Nothing in this section shall prohibit any public~~
19 ~~library or any library operated by an accredited institution of~~
20 ~~higher education from circulating harmful material to any~~
21 ~~person under 18 years of age, provided such circulation is in~~
22 ~~aid of a legitimate scientific or educational purpose, and it~~
23 ~~shall be an affirmative defense in any prosecution for a~~
24 ~~violation of this section that the act charged was committed in~~
25 ~~aid of legitimate scientific or educational purposes.~~

26 ~~(2) Nothing in this section shall prohibit any parent from~~
27 ~~distributing to his child any harmful material.~~

28 ~~(3) Proof that the defendant demanded, was shown and acted~~
29 ~~in reliance upon any of the following documents as proof of the~~
30 ~~age of a child, shall be a defense to any criminal prosecution~~
31 ~~under this section: A document issued by the federal government~~
32 ~~or any state, county or municipal government or subdivision or~~
33 ~~agency thereof, including, but not limited to, a motor vehicle~~
34 ~~operator's license, a registration certificate issued under~~

1 ~~the Federal Selective Service Act or an identification card~~
2 ~~issued to a member of the armed forces.~~

3 ~~(4) In the event an advertisement of harmful material as~~
4 ~~defined in this section culminates in the sale or distribution~~
5 ~~of such harmful material to a child, under circumstances where~~
6 ~~there was no personal confrontation of the child by the~~
7 ~~defendant, his employees or agents, as where the order or~~
8 ~~request for such harmful material was transmitted by mail,~~
9 ~~telephone, or similar means of communication, and delivery of~~
10 ~~such harmful material to the child was by mail, freight, or~~
11 ~~similar means of transport, it shall be a defense in any~~
12 ~~prosecution for a violation of this section that the~~
13 ~~advertisement contained the following statement, or a~~
14 ~~statement substantially similar thereto, and that the~~
15 ~~defendant required the purchaser to certify that he was not~~
16 ~~under 18 years of age and that the purchaser falsely stated~~
17 ~~that he was not under 18 years of age: "NOTICE: It is unlawful~~
18 ~~for any person under 18 years of age to purchase the matter~~
19 ~~herein advertised. Any person under 18 years of age who falsely~~
20 ~~states that he is not under 18 years of age for the purpose of~~
21 ~~obtaining the material advertised herein, is guilty of a Class~~
22 ~~B misdemeanor under the laws of the State of Illinois."~~

23 ~~(f) Child Falsifying Age.~~

24 ~~Any person under 18 years of age who falsely states, either~~
25 ~~orally or in writing, that he is not under the age of 18 years,~~
26 ~~or who presents or offers to any person any evidence of age and~~
27 ~~identity which is false or not actually his own for the purpose~~
28 ~~of ordering, obtaining, viewing, or otherwise procuring or~~
29 ~~attempting to procure or view any harmful material, is guilty~~
30 ~~of a Class B misdemeanor.~~

31 (Source: P.A. 77-2638.)

32 (720 ILCS 5/Art. 12A heading new)

33 ARTICLE 12A. VIOLENT VIDEO GAMES

1 (720 ILCS 5/12A-1 new)

2 Sec. 12A-1. Short title. This Article may be cited as the
3 Violent Video Games Law.

4 (720 ILCS 5/12A-5 new)

5 Sec. 12A-5. Findings.

6 (a) The General Assembly finds that minors who play violent
7 video games are more likely to:

8 (1) Exhibit violent, asocial, or aggressive behavior.

9 (2) Experience feelings of aggression.

10 (3) Experience a reduction of activity in the frontal
11 lobes of the brain which is responsible for controlling
12 behavior.

13 (b) While the video game industry has adopted its own
14 voluntary standards describing which games are appropriate for
15 minors, those standards are not adequately enforced.

16 (c) Minors are capable of purchasing and do purchase
17 violent video games.

18 (d) The State has a compelling interest in assisting
19 parents in protecting their minor children from violent video
20 games.

21 (e) The State has a compelling interest in preventing
22 violent, aggressive, and asocial behavior.

23 (f) The State has a compelling interest in preventing
24 psychological harm to minors who play violent video games.

25 (g) The State has a compelling interest in eliminating any
26 societal factors that may inhibit the physiological and
27 neurological development of its youth.

28 (h) The State has a compelling interest in facilitating the
29 maturation of Illinois' children into law-abiding, productive
30 adults.

31 (720 ILCS 5/12A-10 new)

1 Sec. 12A-10. Definitions. For the purposes of this Article,
2 the following terms have the following meanings:

3 (a) "Video game retailer" means a person who sells or rents
4 video games to the public.

5 (b) "Video game" means an object or device that stores
6 recorded data or instructions, receives data or instructions
7 generated by a person who uses it, and, by processing the data
8 or instructions, creates an interactive game capable of being
9 played, viewed, or experienced on or through a computer, gaming
10 system, console, or other technology.

11 (c) "Minor" means a person under 18 years of age.

12 (d) "Person" includes but is not limited to an individual,
13 corporation, partnership, and association.

14 (e) "Violent" video games include depictions of or
15 simulations of human-on-human violence in which the player
16 kills or otherwise causes serious physical harm to another
17 human. "Serious physical harm" includes depictions of death,
18 dismemberment, amputation, decapitation, maiming,
19 disfigurement, mutilation of body parts, or rape.

20 (720 ILCS 5/12A-15 new)

21 Sec. 12A-15. Restricted sale or rental of violent video
22 games.

23 (a) A person who sells, rents, or permits to be sold or
24 rented, any violent video game to any minor, commits a business
25 offense for which a fine of \$1,001 may be imposed.

26 (b) A person who sells, rents, or permits to be sold or
27 rented any violent video game via electronic scanner must
28 program the electronic scanner to prompt sales clerks to check
29 identification before the sale or rental transaction is
30 completed. A person who violates this subsection (b) commits a
31 business offense for which a fine of \$1,001 may be imposed.

32 (c) A person may not sell or rent, or permit to be sold or
33 rented, any violent video game through a self-scanning checkout

1 mechanism. A person who violates this subsection (c) commits a
2 business offense for which a fine of \$1,001 may be imposed.

3 (720 ILCS 5/12A-20 new)

4 Sec. 12A-20. Affirmative defenses. In any prosecution
5 arising under this Article, it is an affirmative defense:

6 (1) that the defendant was a family member of the minor for
7 whom the game was purchased. "Family member" for the purpose of
8 this Section, includes a parent, sibling, grandparent, aunt,
9 uncle, or first cousin; or

10 (2) that the minor who purchased the game exhibited a draft
11 card, driver's license, birth certificate or other official or
12 apparently official document purporting to establish that the
13 minor was 18 years of age or older, which the defendant
14 reasonably relied on and reasonably believed to be authentic.

15 (720 ILCS 5/12A-25 new)

16 Sec. 12A-25. Labeling of violent video games.

17 (a) Video game retailers shall label all violent video
18 games as defined in this Article, with a solid white "18"
19 outlined in black. The "18" shall have dimensions of no less
20 than 2 inches by 2 inches. The "18" shall be displayed on the
21 front face of the video game package.

22 (b) A retailer's failure to comply with this Section is a
23 petty offense punishable by a fine of \$500 for the first 3
24 violations, and a business offense punishable by a fine of
25 \$1,001 for every subsequent violation.

26 (720 ILCS 5/Art. 12B heading new)

27 ARTICLE 12B. SEXUALLY EXPLICIT VIDEO GAMES

28 (720 ILCS 5/12B-1 new)

29 Sec. 12B-1. Short title. This Article may be cited as the
30 Sexually Explicit Video Games Law.

1 (720 ILCS 5/12B-5 new)

2 Sec. 12B-5. Findings. The General Assembly finds sexually
3 explicit video games inappropriate for minors and that the
4 State has a compelling interest in assisting parents in
5 protecting their minor children from sexually explicit video
6 games.

7 (720 ILCS 5/12B-10 new)

8 Sec. 12B-10. Definitions. For the purposes of this Article,
9 the following terms have the following meanings:

10 (a) "Video game retailer" means a person who sells or rents
11 video games to the public.

12 (b) "Video game" means an object or device that stores
13 recorded data or instructions, receives data or instructions
14 generated by a person who uses it, and, by processing the data
15 or instructions, creates an interactive game capable of being
16 played, viewed, or experienced on or through a computer, gaming
17 system, console, or other technology.

18 (c) "Minor" means a person under 18 years of age.

19 (d) "Person" includes but is not limited to an individual,
20 corporation, partnership, and association.

21 (e) "Sexually explicit" video games include those that the
22 average person, applying contemporary community standards
23 would find, with respect to minors, is designed to appeal or
24 pander to the prurient interest and depicts or represents in a
25 manner patently offensive with respect to minors, an actual or
26 simulated sexual act or sexual contact, an actual or simulated
27 normal or perverted sexual act or a lewd exhibition of the
28 genitals or post-pubescent female breast.

29 (720 ILCS 5/12B-15 new)

30 Sec. 12B-15. Restricted sale or rental of sexually explicit
31 video games.

1 (a) A person who sells, rents, or permits to be sold or
2 rented, any sexually explicit video game to any minor, commits
3 a business offense for which a fine of \$1,001 may be imposed.

4 (b) A person who sells, rents, or permits to be sold or
5 rented any sexually explicit video game via electronic scanner
6 must program the electronic scanner to prompt sales clerks to
7 check identification before the sale or rental transaction is
8 completed. A person who violates this subsection (b) commits a
9 business offense for which a fine of \$1,001 may be imposed.

10 (c) A person may not sell or rent, or permit to be sold or
11 rented, any sexually explicit video game through a
12 self-scanning checkout mechanism. A person who violates this
13 subsection (c) commits a business offense for which a fine of
14 \$1,001 may be imposed.

15 (720 ILCS 5/12B-20 new)

16 Sec. 12B-20. Affirmative defenses. In any prosecution
17 arising under this Article, it is an affirmative defense:

18 (1) that the defendant was a family member of the minor for
19 whom the game was purchased. "Family member" for the purpose of
20 this Section, includes a parent, sibling, grandparent, aunt,
21 uncle, or first cousin; or

22 (2) that the minor who purchased the game exhibited a draft
23 card, driver's license, birth certificate or other official or
24 apparently official document purporting to establish that the
25 minor was 18 years of age or older, which the defendant
26 reasonably relied on and reasonably believed to be authentic.

27 (720 ILCS 5/12B-25 new)

28 Sec. 12B-25. Labeling of sexually explicit video games.

29 (a) Video game retailers shall label all sexually explicit
30 video games as defined in this Act, with a solid white "18"
31 outlined in black. The "18" shall have dimensions of no less
32 than 2 inches by 2 inches. The "18" shall be displayed on the

1 front face of the video game package.

2 (b) A retailer who fails to comply with this Section is
3 guilty of a petty offense punishable by a fine of \$500 for the
4 first 3 violations, and a business offense punishable by a
5 \$1,001 fine for every subsequent violation.

6 (720 ILCS 5/12B-30 new)

7 Sec. 12B-30. Posting notification of video games rating
8 system.

9 (a) A retailer who sells or rents video games shall post a
10 sign that notifies customers that a video game rating system,
11 created by the Entertainment Software Ratings Board, is
12 available to aid in the selection of a game. The sign shall be
13 prominently posted in, or within 5 feet of, the area in which
14 games are displayed for sale or rental, at the information desk
15 if one exists, and at the point of purchase.

16 (b) The lettering of each sign shall be printed, at a
17 minimum, in 36-point type and shall be in black ink against a
18 light colored background, with dimensions of no less than 18 by
19 24 inches.

20 (c) A retailer's failure to comply with this Section is a
21 petty offense punishable by a fine of \$500 for the first 3
22 violations, and a business offense punishable by a \$1,001 fine
23 for every subsequent violation.

24 (720 ILCS 5/12B-35 new)

25 Sec. 12B-35. Availability of brochure describing rating
26 system.

27 (a) A video game retailer shall make available upon request
28 a brochure to customers that explains the Entertainment
29 Software Ratings Board ratings system.

30 (b) A retailer who fails to comply with this Section shall
31 receive the punishment described in subsection (b) of Section
32 12B-25.

1 Section 98. Severability. If any provision of this Act or
2 the application thereof to any person or circumstance is held
3 invalid, the remainder of this Act and the application of such
4 provision to other persons or circumstances shall not be
5 affected thereby.

6 Section 99. Effective Date. This Act takes effect January
7 1, 2006."